

ARTICLE 3.
DECISION-MAKING AND ADMINISTRATIVE BODIES

Section 3.1. Board of County Commissioners.

The Board of County Commissioners shall have the following duties, powers and responsibilities:

- (A) To maintain a Planning Board and assure that the Board performs satisfactorily in development of the comprehensive plan including scheduled review and update of same from time to time, and further that the Planning Board performs duties and responsibilities assigned by statute and by this Chapter;
- (B) To establish a Zoning Board of Adjustment and assure that Board performs satisfactorily in the duties and responsibilities assigned to it by this Chapter;
- (C) To provide by appropriation funds for the administration of this Chapter;
- (D) To establish Rules of Procedure for and to conduct Hearings and decision-making over applications for amendment to or replacement of this Chapter, and;
- (E) To direct and assist the County Manager and County Attorney in their responsibilities assigned by this Chapter and by Statute.

Section 3.2. Planning Board.

The Planning Board is established by Article II, Chapter 1-2, Code of Ordinances, Brunswick County, N.C.

As stated in that Article and hereby reaffirmed, the Planning Board is that planning agency designated by N.C.G.S. 153A-344.

In addition to the duties and responsibilities assigned by Article II, Chapter 1-2, Code of Ordinances, Brunswick County, N.C. and by N.C.G.S. 153A-344, the Planning Board shall also:

- (A) Initiate recommendations to the Board of County Commissioners regarding changes in all or part of the comprehensive plan and to this Zoning Ordinance or other existing or required ordinances which would constitute a part of the total development code package of the County;
- (B) On all applications for amendment to any part of this Chapter to conduct a public hearing after some form of notice, and within thirty (30) days issue a Finding of Fact, guided in its decision by reliance on the elements of the comprehensive plan as to:

- (1) Whether the uses permitted by the proposed change would be appropriate to the area concerned;
- (2) Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional dwelling units likely to be constructed as a result of such change;
- (3) Whether the proposed change is in accordance with existing or proposed plans for providing public water supply and wastewater treatment systems in the vicinity;
- (4) The amount of vacant land which is currently zoned for similar development, and particularly in the area included in the proposed amendment, and any special circumstance which may make part of such vacant land unavailable for development;
- (5) The recent rate at which land is being developed in the proposed zoning district, particularly in the area included in the proposed amendment;
- (6) The effect of the proposed amendment upon the growth of existing neighborhoods and communities as envisioned by the comprehensive plan;
- (7) Consistency of the proposed amendment with the Comprehensive Plan or any other adopted land use document. Rev. 02/06/06
- (8) The proposed amendment is reasonable as it relates to the Comprehensive Plan and the public interest. Rev. 02/06/06
- (9) Whether other areas designated for similar development are likely to be so developed if the proposed amendment is adopted, and whether the designation for such future development should be withdrawn from such areas by further amendment to this Chapter, and
- (10) If the proposed amendment involves a change from a residential to non-residential designation, whether more non-residential land is needed in the proposed location to provide services or employment opportunities for residents of Brunswick County.

This Finding of Fact shall end in a recommendation of disposition of the application, which recommendation shall be presented on the next possible Agenda of the Board of County Commissioners. If favorable, it shall be accompanied on that Agenda by a draft ordinance of amendment for first reading and setting of Public Hearing.

- (C) Serve under N.C.G.S. 153A-345 as the planning agency to permit Special Exceptions in various Zoning Districts and in doing so to meet all requirements of Statute and of this Chapter, and in exercise of those specific Special Exceptions only, authorize such modification to the terms of this Chapter as they relate to the Special Exception as shown on the Site Specific Development Plan or other part of the development proposal under the Special Exception.

The purpose of having certain uses as permissible as Special Exceptions rather than as permitted uses is to insure that in specific instances the use shall be compatible with immediately surrounding development in keeping with the Statement of Intent of the Zoning District.

The Board will make a Finding as to whether the proposal meets all requirements and conditions of this Ordinance and whether it is in keeping with the Statement of Intent of the Zoning District and whether it will not substantially injure the value of adjoining or abutting property, subject to appropriate conditions and safeguards, such as:

- (1) Support facilities such as parking areas and driveways,
- (2) Pedestrian and vehicular circulation systems,
- (3) Screening and landscaping,
- (4) Timing of the proposed development,
- (5) Adequacy of easements and rights-of-way,
- (6) A Traffic Impact Analysis (TIA) must be completed prior to the submittal of any preliminary plan that will generate more than one hundred (100) vehicle trips during the peak hour or one thousand (1000) total new daily trips based on most recent trip generation rates by the Institute of Traffic Engineers (ITE). The TIA shall be prepared in accordance with scoping standards and guidelines set forth by the North Carolina Department of Transportation (NCDOT) and Brunswick County. Rev. 06/05/06
- (7) Impact reductions by such means as rearrangement of buildings on the site, and in no instance shall any of these conditions be more restrictive than any requirements which would pertain to that particular type of development found elsewhere in a similar Zoning District.

Section 3.3. Zoning Board of Adjustment.

A Zoning Board of Adjustment is hereby created. This Board may also be known as the Board of Adjustment.

The Zoning Board of Adjustment shall consist of five voting members, each a resident of one of the five Electoral Voting Districts, of three alternate members, and of four Ex Officio, non-voting members.

For voting members including alternate members, term of office shall be three years following initial staggered appointments. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member.

Ex Officio members include the County Attorney or assignee, a member of the Board of County Commissioners selected by the Board of County Commissioners, a member of the Planning Board selected by the Planning Board, and only in the event the individual is not the person appointed as Zoning Administrator, the Director of Building Inspections or Chief Building Inspector.

In the event the Director of Building Inspections or Chief Building Inspector is the Zoning Administrator, then the Planning Director shall serve as the fourth Ex Officio member.

Terms of office of Ex Officio members are at the pleasure of their appointing authority. The Zoning Administrator shall serve as Clerk to the Board of Adjustment.

The Board of Adjustment is a quasi-judicial body; it shall establish a regular schedule of meeting as to time, date, and place, and shall establish Rules of Procedure.

A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote. As required by N.C.G.S. 153A-345(e), a four-fifths vote of the members is required on any motion before the Board.

The Year of the Zoning Board of Adjustment is August 1–July 31.

As early as possible in each new Year of the Board, the voting members shall elect a chairman and vice-chairman. Either such party when in the chair shall have the authority to administer oaths to witnesses.

All decisions of the Board of Adjustment run with the land, never the person or corporation. Special Exceptions may have time limits imposed on their validity.

The minutes of the Zoning Board of Adjustment shall be kept in such detail as necessary, and do not reflect official action of the Board until adoption of same.

Minutes shall be filed in the office of the Zoning Administrator, as a public record.

The Zoning Board of Adjustment shall perform the following duties:

- (A) As specified in N.C.G.S. 153A-345(b), to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator.

Within twenty (20) days of the order, requirement, decision, or determination, the aggrieved party must file such appeal with the Zoning Administrator, together with payment of a filing fee, to initiate the appeal process.

- (B) As specified in N.C.G.S. 153A-345(c), for those permissible but not outright permitted uses Special Exceptions shown in a Zoning District as under the determination of the Zoning Board of Adjustment, the Board may permit or deny such proposals in accordance with the principles, conditions, safeguards, and procedures specified in this Chapter.

The purpose of having certain uses as permissible as Special Exceptions rather than as permitted uses is to insure that in specific instances the use shall be compatible with immediately surrounding development in keeping with the Statement of Intent of the Zoning District.

Applications for Special Exceptions by the Zoning Board of Adjustment shall be filed with the Zoning Administrator, meeting all requirements for such filing as may exist from time to time as set by the Zoning Board of Adjustment.

Individual mailed notice to the applicant, and to any affected party who has a standing request for notice regarding the particular land, and to adjacent property owners shall be provided two (2) weeks prior to the public hearing.

The Board of Adjustment has the authority to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. 153A-345(g). Rev. 02/06/06

The Public Hearing is not to solicit broad public opinion about how the board should vote on a matter; rather, it is a time for submittal of relevant factual evidence into the record by applicants, proponents, opponents and staff, all parties being sworn in advance at the opening, as required by statute. Opposing parties have the right to cross examine witnesses, and to file documents into the record, preferably in advance of the hearing and at the time of or as soon as possible after filing the application for Special Exception.

At the conclusion after hearing and rebuttals from all parties expressing such interest to be heard, the Zoning Administrator shall place into the record relevant evidence as a series of findings of fact as to whether the proposal meets all requirements and conditions of this Ordinance and whether it is in keeping with the Statement of Intent of the particular Zoning District and whether it will not substantially injure the value of adjoining or abutting property, subject to appropriate conditions and safeguards, such as:

- (1) Support facilities such as parking areas and driveways,

- (2) Pedestrian and vehicular circulation systems,
- (3) Screening and landscaping,
- (4) Timing of the proposed development,
- (5) Adequacy of easements and rights-of-way,
- (6) A Traffic Impact Analysis (TIA) must be completed prior to the submittal of any preliminary plan that will generate more than one hundred (100) vehicle trips during the peak hour or one thousand (1000) total new daily trips based on most recent trip generation rates by the Institute of Traffic Engineers (ITE). The TIA shall be prepared in accordance with scoping standards and guidelines set forth by the North Carolina Department of Transportation (NCDOT) and Brunswick County. Rev. 06/05/06
- (7) Impact reductions by such means as rearrangement of buildings on the site, and in no instance shall any of these conditions be more restrictive than any requirements which would pertain to that particular type of development found elsewhere in a similar Zoning District.

Both proponent and opponent will then be offered opportunity of rebuttal of the Zoning Administrator's evidence.

The Zoning Board of Adjustment then, and at this same meeting where evidence has been introduced through the application and then the public hearing process or at a continued meeting held within a reasonable period of time, shall make a full statement of both the evidence and its findings on each point over which the Zoning Administrator was required to report, and either issue the Special Exception, or issue it with further appropriate conditions and safeguards, or deny such issuance.

- (C) As specified in N.C.G.S. 153A-345(d), the Zoning Board of Adjustment may authorize in specific cases such variances to the terms of this Chapter as are commissioned with the provisions of N.C.G.S. 153A-345(d).

In no case shall the Zoning Board of Adjustment grant a use variance nor shall the Board grant a variance to exceed the maximum density as to number of dwelling units to the acre in a Zoning District.

Appeals for variance shall be filed with the Zoning Administrator, and meet all requirements as the Zoning Board of Adjustment shall establish, together with payment of a filing fee.

The same posting requirements and Public Hearing procedure apply as in (B) above.

At the conclusion of testimony of evidence into the record including any rebuttals related thereto, and as a part of the evidence, the Zoning Administrator shall report a Finding of Fact on each of the following points:

- (1) Whether on the basis of the evidence presented to this point in the public hearing the petitioner has proved that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, so that:
 - (a) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property, and
 - (b) The hardship results from the application of the ordinance, and
 - (c) The hardship is suffered by the applicant's property, and
 - (d) The hardship is not the result of the applicant's own actions, and
 - (e) The hardship is peculiar to the applicant's property.
- (2) Whether the variance is in harmony with the general purpose and intent of the ordinance and whether it preserves its spirit.
- (3) Whether in the granting of the variance the public safety and welfare will have been assured and substantial justice will have been done.

Both proponent and opponent will then be offered opportunity of rebuttal of the Zoning Administrator's evidence.

The Zoning Board of Adjustment then, and at the same meeting where evidence has been introduced through the application and then the public hearing process or at a continued meeting held within a reasonable period of time, shall make a full statement of both the evidence and its findings on each point over which the Zoning Administrator was required to report, and either issue the variance, or issue it with appropriate conditions and safeguards, or deny such issuance.

- (D) In concert with the County Attorney or assignee, interpret zoning lines, and Zoning District boundary lines and related questions.

Section 3.4. Zoning Administrator.

The County Manager shall name a Zoning Administrator.

The Zoning Administrator or designee shall have the following authority, duties, and responsibilities:

- (A) The administration and enforcement of this Chapter.
- (B) The issuance of permits and certifications required and/or authorized by this Chapter.
- (C) Administrative, technical and professional support to the Zoning Board of Adjustment.
- (D) Liaison with other departments.
- (E) Collection of, and maintenance of, data and other information necessary to discharge responsibilities under this Chapter.
- (F) In the exercise of professional work, and after consultation with the County Attorney, to issue written clarifications of intent of language in this Chapter, and to maintain and publish a compendium of all such clarifications/interpretations.
- (G) To determine if a Traffic Impact Analysis (TIA) is required. Rev. 06/05/06
- (H) Temporary Compliance Permits.

A Temporary Zoning Compliance Permit and a Temporary Certificate of Occupancy shall be issued prior to actual amendment to the Zoning Ordinance where the following criteria have been met:

- (1) A condition is discovered either through the application process, petition, or field observations, which prevents strict compliance with the Zoning Ordinance and issuance of a Certificate of Occupancy and the condition was not caused or brought about by an individual action of an owner or owners seeking amendment and
- (2) The condition which would prevent strict compliance with this Chapter applies to a number of similarly situated lots, not just to one lot, and
- (3) Either the owner or owners petition for change or the Zoning Administrator initiate the necessary change to this Chapter to correct the condition, and

- (4) The petition for change in the opinion of the Zoning Administrator is likely to be allowed; if in the opinion the Zoning Administrator the above criteria have been met shall issue a Temporary Certificate of Compliance and when necessary a Temporary Certificate of Occupancy, and shall make and report the Findings of Fact necessary to support his action in each such instance at the next meeting of the Planning Board together with a request for said Board to expedite whatever amendment is deemed necessary to correct the situation.

A Temporary Certificate of Compliance or Temporary Certificate of Occupancy shall be considered null and void should the amendment not be adopted within six (6) months from initiation of the amendment.

The owner of the property shall be deemed to take with knowledge that a permit issued under this section may become null and void and require immediate actual compliance or removal of any offending structure.

No officer issuing a permit under this section shall be liable to any party for his actions unless done willfully and outside the scope of his authority. The County shall indemnify and save harmless any official incurring liability for his actions under this section unless done willfully and outside the scope of his authority.

Section 3.5. Planning Director.

The Planning Director shall have the following duties:

- (A) To review this Chapter at least once a year as to relationship to the comprehensive plan and issue report to the Planning Board of resultant observations and findings including therein any recommendations as to possible need for amendment or addition either to this Chapter or other development law of Brunswick County or the comprehensive plan.
- (B) As Clerk to the Planning Board, provide needed support for the various functions the Planning Board has under this Chapter, including maintenance of this Chapter to meet changing conditions, amendments, and those Special Exceptions within the Planning Board purview, and their interpretative powers under this Chapter.
- (C) As agent of the County Manager, maintain the Zoning Map of this Chapter.
- (D) To serve as advisor to the Board of County Commissioners on any matter relevant to this Chapter, the comprehensive plan, and other development codes, and representing before the Board of Commissioners the Planning Board in determinations, findings, and recommendations.

- (E) In the absence of the Zoning Administrator, the Planning Director is responsible for assuring the actions called for by Section 3.104(G) above are carried out.

Section 3.6. Resubmission of Petition.

Upon final action by the Board of Commissioners to deny or approve an application for the rezoning of a piece of property, the Planning Board shall not review any applications for changes affecting the same property or any portion thereof until the expiration of one (1) year from the date of such previous action except as provided as follows:

The Zoning Administrator may allow re-submission of such petition within said one (1) year period if he determines that, since the date of action on the prior petition:

- (A) There has been a significant change in the zoning district classification of an adjacent piece of property.
- (B) The Board of Commissioners has adopted a plan that changes public policy regarding how the property affected by the amendment should be developed.
- (C) Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification.
- (D) There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one year restriction on a new position; this, however, shall not include a change in the ownership of the subject property.